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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 THE WAVE STUDIO, LLC, a New York
13 Limited Liability Company,

14 Plaintiff,

15 v.

16 VIRGIN AMERICA INC., a Delaware
Corporation, VIRGIN ATLANTIC AIRWAYS
17 LIMITED, a United Kingdom Corporation,
VIRGIN VACATIONS, INC., a Florida
18 Corporation, and DOES 1-100,

19 Defendants.
20

Case No.: 3:15-cv-00952

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

JURY TRIAL DEMANDED

21 The Wave Studio, LLC (“Plaintiff”), by its attorneys, Cobalt LLP, for its complaint against
22 Virgin Atlantic Airways Limited (“Virgin Atlantic”), Virgin America, Inc. (“Virgin America”),
23 Virgin Vacations, Inc. (“Virgin Vacations”), and Does 1-100 (collectively “Defendants”) alleges as
24 follows:

25 **NATURE OF THIS ACTION**

26 1. Plaintiff is the copyright owner of photographic works created by one of its members, Junior
27 Lee. Ms. Lee is a Malaysian photographer who uses her pictures to create distinctive marketing and
28 promotional materials for prominent hotels and renowned travel organizations worldwide. This is an action

2. Ms. Lee is commissioned either by hotel management companies and promotional agencies or by hotel and travel locations directly to photograph elite hotel properties and destination locales and to create marketing and promotional materials featuring her photographs. However, per the express terms of her contract with such agencies, Plaintiff retains sole and exclusive ownership of all right, title, and interest in and to the underlying photos, as well as the sole and exclusive right to license, distribute, and use the photographs for any and all other purposes.

3. As set forth in more detail below, Defendants have committed blatant acts of copyright infringement by improperly using Plaintiff's photographs without authorization for their own financial gain, including but not limited to, using Plaintiff's photographs in articles, photo galleries, and promotional materials, all of which are generating traffic to and revenue for Defendants and their businesses. By virtue of this action, Plaintiff should be awarded the appropriate injunctive relief and monetary damages to remedy and redress Defendants' rampant, willful, and continued misuse of Plaintiff's copyrighted photographs.

JURISDICTION AND VENUE

4. This Complaint alleges causes of action under the copyright laws of the United States, Title 17 of the United States Code.

5. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338 because Plaintiff's claims against Defendants arise under Title 17 of the United States Code.

6. This Court has personal jurisdiction over Defendants because Defendants have done and continue to do business in this District, including but not limited to entering into contracts with entities in this District and offering their services throughout this District.

7. Pursuant to 28 U.S.C. § 1391 and 1400(a), venue properly lies in this Court because a substantial part of the events giving rise to the claims alleged in this Complaint occurred in this judicial District and because Defendants reside or are found within this District within the meaning of 28 U.S.C. Section 1400(a).

/ / /

INTRADISTRICT ASSIGNMENT

8. Pursuant to Civil L.R. 3-2(c) and General Order No. 44, this case is properly assigned to any division of this Court, except that pursuant to Civil Local Rules 3-2(g) and 73-1, Plaintiff does not consent to assignment to a Magistrate Judge residing in the Eureka Division.

THE PARTIES

9. Plaintiff, The Wave Studio, LLC, is a limited liability company organized under the laws of the State of New York, with its principal place of business at One Barker Avenue, #542, White Plains, New York 10601. Plaintiff is a business entity operated by photographer Junior Lee, a Malaysian citizen currently domiciled in Singapore. Ms. Lee creates marketing materials for businesses worldwide using her original works, but retains ownership of all rights, title, and interest in and to all artistic works used therein. The Wave Studio, LLC was formed to hold, manage, and control the U.S. intellectual property rights to said works, including, but not limited to, several U.S. copyright registrations.

10. Upon information and belief, Defendant Virgin America Inc. is a Delaware corporation with its principal place of business at 555 Airport Boulevard, Burlingame, California 94010. Upon information and belief, Defendant Virgin America Inc., itself or through affiliated entities, owns and uses, and/or has owned and used, at least the domain name www.virginamerica.com. Upon information and belief, during all relevant time periods, Defendant Virgin America and/or its related or affiliated companies regularly transacted or solicited business in this district through, *inter alia*, a website resolving to www.virginamerica.com.

11. Upon information and belief, Defendant Virgin Atlantic Airways Limited is a foreign business corporation registered in the State of New York, with its principal place of business at 75 North Water Street, South Norwalk, Connecticut 06854. Upon information and belief, Defendant Virgin Atlantic Airways Limited itself or through affiliated entities, owns and uses, and/or has owned and used, at least the domain name www.virginatlantictravelplus.com. Upon information and belief, during all relevant time periods, Defendant Virgin Atlantic and/or its related or affiliated companies regularly transacted or solicited business in this district through, *inter alia*, website resolving to www.virginatlantictravelplus.com.

12. Upon information and belief, Defendant Virgin Vacations, Inc. is a Florida corporation with its principal place of business at 5787 Vineland Road, Suite 204, Orlando, Florida 32819. Upon information

1 and belief, Defendant Virgin Vacations, Inc., itself or through affiliated entities, owns and uses, and/or has
 2 owned and used, at least the domain name www.virgin-vacations.com. Upon information and belief, during
 3 all relevant time periods, Defendant Virgin Vacations and/or its related or affiliated companies regularly
 4 transacted or solicited business in this district through, *inter alia*, website resolving to www.virgin-
 5 vacations.com.

6 13. The true names and capacities, whether individual, corporate, or otherwise, of Defendants
 7 Does 1 through 100 are presently unknown to Plaintiff, who, therefore, sues them by such fictitious names.
 8 Plaintiff expects, but is presently without information sufficient to confirm, that one or more of Defendants
 9 distributed Plaintiff's photographs to third parties without Plaintiff's authorization and/or otherwise infringed
 10 upon Plaintiff's copyright rights to the works of art at issue in this case, infringing those copyright rights. At
 11 such time as Plaintiff ascertains the identity and nature of any such third parties, Plaintiff will seek leave of
 12 Court to amend this Complaint accordingly. On information and belief, Plaintiff alleges that each of Does 1
 13 through 100 was the agent, representative, or employee of each of the other Defendants and was acting at all
 14 times within the scope of his, her, or its agency or representative capacity, and that each of Does 1 through
 15 100 are liable to Plaintiff in connection with the claims sued upon here and are responsible in some manner
 16 for the wrongful acts and conduct alleged here.

17 **FACTUAL BACKGROUND**

18 14. Over her more than 20 year career, Junior Lee has established a widely successful business
 19 in travel and hotel photography worldwide. She has photographed numerous storied properties, including
 20 The Setai Miami (USA), The Heritage House Mendocino (USA), The Chedi Milan (Italy), The Leela Goa
 21 (India), The Chedi Muscat (Oman), The Nam Hai Hoi An (Vietnam), The Chedi Chiang Mai (Thailand), The
 22 Chedi Phuket (Thailand), The Datai Langkawi (Malaysia), The Andaman Langkawi (Malaysia), The Saujana
 23 Kuala Lumpur (Malaysia), The Club at The Saujana Kuala Lumpur (Malaysia), Carcosa Seri Negara Kuala
 24 Lumpur (Malaysia), The Legian Seminyak (Bali), The Club at The Legian Seminyak (Bali), The Chedi Club
 25 Ubud (Bali), The Serai Club Jimbaran (Bali), The Lalu Sun Moon Lake (Taiwan), Langsuan Apartment
 26 Bangkok (Thailand), Seah St. Apartment (Singapore), GHM Boutique Products (Singapore), The Fullerton
 27 Hotel (Singapore), La Pari-Pari Hotel Langkawi (Malaysia), and Four Seasons Great Exuma (Bahamas). Her
 28 photographs are highly sought after works of art that businesses worldwide routinely display in the course of

1 promoting their facilities, custom, and trade. Her photographs of The Setai Miami, The Chedi Muscat, The
 2 Nam Hai Hoi An, The Chedi Club Ubud, The Chedi Chiang Mai, The Leela Goa, The Carcosa Seri Negara
 3 Kuala Lumpur, The Club at The Legian Seminyak, The Andaman Langkawi, and The Datai Langkawi (the
 4 “Hotel Photographs”) are at issue in this matter.

5 15. Ms. Lee’s photography business is promotional in nature. Generally, Ms. Lee is
 6 commissioned by her clientele to photograph certain items, personnel, sites, or facilities, modify the images
 7 as necessary, and deliver the final product to her clientele for approval. Ms. Lee is usually compensated via
 8 the client’s purchase of marketing materials that incorporate her photographs. In other words, the client
 9 purchases the marketing materials designed and manufactured by Ms. Lee, inclusive of a limited license to
 10 distribute the marketing materials created by Ms. Lee. The client does not purchase the underlying
 11 photographs.

12 16. Ms. Lee specifically reserves all rights to her works that are not otherwise purchased by her
 13 clientele. One of the rights she reserves is the ownership of the photographs, including the copyright in and
 14 to the same.

15 17. Ms. Lee, through various business entities (including, but not limited to, Wave-s, The Wave
 16 Pte. Ltd. and The Wave Design Pte. Ltd.), obtained copyright registrations from the United States Copyright
 17 Office for the Hotel Photographs (collectively and individually, “Copyrighted Works”). True and correct
 18 copies of registration certificates for the Copyrighted Works are attached hereto as **Exhibit 1**. These
 19 copyright registrations are identified in the following chart:

Registration Number	Title of Work
VA 1-432-324	Wave-s Photographs 2001
VA 1-432-325	Wave-S photographs 2002
VA 1-432-326	The Wave Design Pte. Ltd. Photographs 2007 (A)
VA 1-432-327	The Wave Design Pte. Ltd. Photographs 2007 (B)
VA 1-432-328	Wave-s Photographs 2003
VA 1-432-329	Wave-s Photographs 2004
VA 1-432-330	The Wave Design Pte. Ltd. Photographs 2006

Registration Number	Title of Work
VA 1-432-331	The Wave Pte. Ltd. Photographs 2005 (A)
VA 1-432-332	The Wave Design Pte, Ltd. Photographs 2005 (B)
VA 1-432-336	Wave-s Photographs 2002 (B)
VA 1-433-816	Wave-s Photographs 2002 (C)
VA 1-758-524	Wave-s Photographs 2004 (B)
VA 1-765-854	The Wave Design Pte. Ltd. published legian 121
VA 1-824-376	The Wave Design Pte. Ltd. – datai105
VA 1-825-249	The Wave Design Pte. Ltd. – detai104
VA 1-825-264	The Wave Design Pte Ltd. - andaman067
VA 1-825-429	Wave-s Photographs 2004 (D)-chediclub141
VA 1-825-431	Wave-s Photographs 2004 (C) – legian122
VA 1-829-021	The Wave Design Pte. Ltd. – andaman068
VA 1-842-228	The Wave Design Pte. Ltd. – bkk018 – bkk025
VA 1-842-230	Wave-s Photographs 2004 – Chiangmai239
VA 1-857-706	Wave-S Photographs 2002 – lalu159
VAu 1-055-458	The Wave Design Pte. Ltd. Unpublished photographs 2005 (C) setai429 – setai803
VAu 1-055-459	The Wave Design Pte. Ltd. Unpublished photographs 2005 (D) setai804 – setai958; setai960 – setai179
VAu 1-057-927	The Wave Pte. Ltd. unpublished setai182
VAu 1-060-180	The Wave Design Pte. Ltd. unpublished setai0183; 0184
VAu 1-060-182	Wave-s unpublished setai959
VAu 1-110-867	The Wave Design Pte. Ltd. – Unpublished Photograph setai1180
VAu 1-144-751	The Wave Design Pte. Ltd. – Unpublished setai1181

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1 18. On November 11, 2011, the authors of the Copyrighted Works, by and through Ms. Lee,
2 assigned all right, title and interest in and to the Copyrighted Works to Plaintiff.

3 19. Plaintiff has never assigned, licensed, or otherwise transferred any interest in and to the
4 Copyrighted Works to Defendants or otherwise dedicated them to the public.

5 20. Defendants did not seek, nor have they ever sought, Plaintiff or Junior Lee's permission to
6 utilize the Hotel Photographs.

7 21. Despite having no permission, consent, or license to do so from Plaintiff, Defendants have
8 used and continue to use the Hotel Photographs in violation of Plaintiff's exclusive rights as a copyright
9 owner, and have not compensated Plaintiff for such use.

10 22. Upon information and belief, the Hotel Photographs that are the subject of the Copyrighted
11 Works have been seen and continue to be seen by thousands of users in the United States and worldwide on a
12 daily basis.

13 23. Upon information and belief, Defendants have utilized the Hotel Photographs for purposes
14 of trade, including promoting and advertising the bookings to the boutique and high-end hotels featured in
15 those Copyrighted Works, thus realizing significant revenue, all without Plaintiff's authorization.

16 **FIRST CLAIM FOR RELIEF**

17 **Copyright Infringement**

18 **(17 U.S.C. § 101 *et seq.*)**

19 24. Plaintiff repeats and realleges and incorporates by reference each and every allegation
20 contained in paragraphs 1 through 23 above.

21 25. Defendants have directly infringed Plaintiff's Hotel Photographs that are the subject of the
22 Copyrighted Works by reproducing, displaying, and/or distributing unauthorized copies of Plaintiff's
23 photographs in violation of 17 U.S.C. § 501 *et seq.*

24 26. Defendants copied Plaintiff's entire images for their own personal commercial gain.
25 Moreover, Defendants' use of the Hotel Photographs is for the exact same purpose as Plaintiff's intended
26 use: to promote and market hotel properties and destination locations. Thus, there is no added benefit to the
27 public from having Defendants display Plaintiff's Hotel Photographs.

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29. Upon information and belief, Defendants knew or should have known that their acts constituted copyright infringement.

31. Plaintiff has been damaged by Defendants' conduct, including, but not limited to, economic losses. Plaintiff continues to be damaged by such conduct, and has no adequate remedy at law to compensate Plaintiff for all the possible damages stemming from the Defendants' conduct.

PRAYER FOR RELIEF

1. That Defendants have infringed, directly or indirectly, Plaintiff's rights in the Copyrighted Works;

COMPLAINT FOR COPYRIGHT INFRINGEMENT

5. For entry of judgment that Defendants shall pay Plaintiff's costs and attorneys' fees incurred in this action, pursuant to 17 U.S.C. § 505;

6. For entry of judgment that Plaintiff be granted such other relief as the Court deems just, equitable and proper.

COBALT LLP

Attorneys for Plaintiff
THE WAVE STUDIO, LLC

The Wave Studio, LLC respectfully requests a jury trial on all issues triable thereby.

COBALT LLP

Attorneys for Plaintiff
THE WAVE STUDIO, LLC